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DONG YOUNG DIAMOND INDUSTRIAL CO., LTD,

AND DONGSOO LEE.

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

CONTINENTAL D.I.A. DIAMOND  
PRODUCTS, INC., a California corporation,

Plaintiff/Counterclaim Defendant,

v.

DONG YOUNG DIAMOND INDUSTRIAL  
CO., LTD, a South Korean company, DONGSOO  
LEE, an individual, and DOES 1-10, inclusive,

Defendant/Counterclaim Plaintiff.

Case No. 08-cv-2136-SI

**[PROPOSED] ORDER DENYING  
MOTION TO STRIKE**

Date: August 29, 2008

Time: 9:00 a.m.

Location: Courtroom 10, 19th Floor

1 Plaintiff moves to strike the Second, Sixth, Twenty-Fourth and Twenty-Fifth affirmative  
2 defenses of defendants Dong Young Diamond Industrial Co., Ltd and Dongsoo Lee (collectively  
3 “Dong Young”). For the foregoing reasons, Plaintiff’s Motion to Strike is DENIED.

4 Motions under Fed.R.Civ.P. 12(f) motions are disfavored. *Equine Legal Solutions, Inc. v.*  
5 *Buntrock*, 2008 U.S. Dist. LEXIS 9182 (N.D. Cal. Jan. 9, 2008) (quoting *Bureerong v. Uvawas*,  
6 922 F. Supp. 1450, 1478 (C.D. Cal. 1996)). *See also Ellison v. Autozone, Inc.*, 2007 U.S. Dist.  
7 LEXIS 70187 (N.D. Cal. Sept. 13, 2007) (citing *Neilson v. Union Bank of Cal., N.A.*, 290 F.  
8 Supp. 2d 1101, 1152 (C.D. Cal. 2003)); *In re Wal-Mart Stores, Inc.*, 505 F. Supp. 2d 609, 614  
9 (N.D. Cal. 2007); *Jadwin v. County of Kern*, 2007 U.S. Dist. LEXIS 81126, at \*4 (E.D. Cal. Oct.  
10 23, 2007) (“[M]otions to strike are ‘generally disfavored and not frequently granted,’ for three  
11 reasons: (1) the liberal pleading standard in federal practice; (2) they are often deployed as a  
12 delay tactic; and (3) the prevailing view that ‘a case should be tried on the proofs rather than the  
13 pleadings.’) (citations omitted). Before a motion to strike affirmative defenses may be granted,  
14 “the Court must be convinced that there are no questions of fact, that any questions of law are  
15 clear and not in dispute, and that under no set of circumstances could the defenses succeed.”  
16 *Levin-Richmond Terminal Corp. v. International Longshoremen's & Warehousemen's Union,*  
17 *Local 10*, 751 F. Supp. 1373, 1375 (N.D. Cal. 1990) (quoting *Systems Corp. v. American Tel. &*  
18 *Tel. Co.*, 60 F.R.D. 692, 694 (S.D.N.Y. 1973)).

19 Under the liberal pleading standards of the Federal Rules, Dong Young's Second, Sixth,  
20 Twenty-Fourth and Twenty-Fifth affirmative defenses are sufficiently pled.

21 IT IS SO ORDERED.

22  
23 DATED: August \_\_, 2008

\_\_\_\_\_  
24 Honorable Susan Illston  
United States District Court Judge

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